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Regulatory
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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Board for Mental Health, Mental Retardation and Substance Abuse Services
Virginia Administrative Code (VAC) citation	12VAC 35-210
Regulation title	Regulations to Govern Temporary Leave from State Mental Health and State Mental Retardation Facilities
Action title	Promulgate a new regulation to govern temporary absences or leave practices from state mental health or mental retardation facilities
Document preparation date	09/20/2004

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style, and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The purpose of this action is to promulgate a new regulation to govern practices related to temporary absences or leave from state mental health and mental retardation facilities. The regulation will describe the conditions for granting leave to patients or residents of facilities and the duration of such leave. The goal of the regulation is to standardize leave procedures in order to ensure accountability and legal consistency and to promote best practices for the treatment and training of individuals receiving services.

Legal basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The State Mental Health, Mental Retardation and Substance Abuse Services Board has the authority to promulgate regulations related to convalescent leave and temporary leave situations under § 37.1-98(B) of the *Code of Virginia* and is required to promulgate such regulations if the Department of Mental Health, Mental Retardation and Substance Abuse Services (Department) uses temporary leave.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed. Include the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. Delineate any potential issues that may need to be addressed as the regulation is developed.

This regulation will establish the general process and requirements with regard to temporary leave from state facilities. It will define the types and duration of leave and the conditions for granting such leave. The regulation will also include provisions to ensure there is accountability and appropriate care for persons who are on leave status, and require uniformity in facility procedures and decision-making with regard to leave. The agency believes this regulation is essential to protect the health, safety, and welfare of individuals who are on leave status. The agency also believes that regulatory provisions should encourage the involvement of the individual and his family in planning and decision-making with regard to temporary leave and that leave situations may be used to support individual treatment and training goals. The agency intends to address these issues in the development of this regulation.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.

There are no known viable alternatives to this regulatory action. The Code requires the agency to promulgate regulations for temporary leave if the Department uses such leave at its facilities. The purpose of this action is to comply with the legal requirement by promulgating a new regulation to govern leave practices.

Impact on family

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability.

The regulatory action should have a positive impact on the stability of families with members who are receiving services in state facilities. The new regulation is intended to ensure that leave practices are consistent and promote successful home or community visits for individuals and their families, consistent with individual treatment or training goals.